

AMENDMENT IN THE NATURE OF A SUBSTITUTE
TO H.R. 850
OFFERED BY MR. WELDON OF PENNSYLVANIA,
MR. SISISKY, AND MR. ANDREWS

Strike all after the enacting clause and insert the
following:

1 SECTION 1. SHORT TITLE.

2 This Act may be cited as the “Protection of National
3 Security and Public Safety Act”.

4 SEC. 2. EXPORTS OF ENCRYPTION.

5 (a) **AUTHORITY TO CONTROL EXPORTS.**—The Presi-
6 dent shall control the export of all dual-use encryption
7 products.

8 (b) **AUTHORITY TO DENY EXPORT FOR NATIONAL**
9 **SECURITY REASONS.**—Notwithstanding any provision of
10 this Act, the President may deny the export of any
11 encryption product on the basis that its export is contrary
12 to the national security interests of the United States.

13 (c) **DECISIONS NOT SUBJECT TO JUDICIAL RE-**
14 **VIEW.**—Any decision made by the President or his des-
15 ignee with respect to the export of encryption products
16 under this Act shall not be subject to judicial review.

1 **SEC. 3. LICENSE EXCEPTION FOR CERTAIN ENCRYPTION**
2 **PRODUCTS.**

3 Encryption products with encryption strength equal
4 to or less than the level identified in section 5 shall be
5 eligible for export under a license exception if—

6 (1) such encryption product is submitted for a
7 1-time technical review;

8 (2) such encryption product does not require li-
9 censing under otherwise applicable regulations;

10 (3) such encryption product is not intended for
11 a country, end user, or end use that is by regulation
12 ineligible to receive such product, and the encryption
13 product is otherwise qualified for export; and

14 (4) the exporter, at the time of submission of
15 the product for technical review, provides the names
16 and addresses of its distribution chain partners.

17 **SEC. 4. ONE-TIME PRODUCT REVIEW.**

18 The President shall specify the information that must
19 be submitted for the 1-time review referred to in section
20 3.

21 **SEC. 5. ELIGIBILITY LEVELS.**

22 (a) INITIAL ELIGIBILITY LEVEL.—Not later than
23 180 days after the date of the enactment of this Act, the
24 President shall notify the Congress of the maximum level
25 of encryption strength that may be exported from the
26 United States under license exception pursuant to section

1 3 without harm to the national security interests of the
2 United States. Such level shall not become effective until
3 30 days after such notification.

4 (b) PERIODIC REVIEW OF ELIGIBILITY LEVEL.—The
5 President shall, at the end of each successive 180-day pe-
6 riod after the notice provided to the Congress under sub-
7 section (a), notify the Congress of the maximum level of
8 encryption strength, which may not be lower than that in
9 effect under this section during that 180-day period, that
10 may be exported from the United States under a license
11 exception pursuant to section 3 without harm to the na-
12 tional security interests of the United States. Such level
13 shall not become effective until 30 days after such notifica-
14 tion.

15 **SEC. 6. ENCRYPTION LICENSES REQUIRED.**

16 (a) UNITED STATES PRODUCTS EXCEEDING CER-
17 TAIN BIT LENGTH.—An export license is required for the
18 export of any encryption product designed or manufac-
19 tured within the United States with an encryption
20 strength exceeding the maximum level eligible for a license
21 exception under section 3.

22 (b) REQUIREMENTS FOR EXPORT LICENSE APPLICA-
23 TION.—To apply for an export license, the applicant shall
24 submit—

25 (1) the product for technical review;

1 (2) a certification identifying—

2 (A) the intended end use of the product;

3 and

4 (B) the expected end user of the product;

5 (3) in instances where the export is to a dis-
6 tribution chain partner—

7 (A) proof that the distribution chain part-
8 ner has contractually agreed to abide by all
9 laws and regulations of the United States con-
10 cerning the export and reexport of encryption
11 products designed or manufactured within the
12 United States; and

13 (B) the name and address of the distribu-
14 tion chain partner; and

15 (4) any other information required by the Presi-
16 dent.

17 (c) POST-EXPORT REPORTING.—

18 (1) UNAUTHORIZED USE.—Any exporter of
19 encryption products that are designed or manufac-
20 tured within the United States shall submit a report
21 to the Secretary at any time the exporter has reason
22 to believe that any such product exported pursuant
23 to this section is being diverted to a use or user not
24 approved at the time of export.

1 (2) DISTRIBUTION CHAIN PARTNERS.—All ex-
2 porters of encryption products that are designed and
3 manufactured within the United States, and all dis-
4 tribution chain partners of such exporters, shall sub-
5 mit to the Secretary a report which shall specify—

6 (A) the particular product sold;

7 (B) the name and address of the end user
8 of the product; and

9 (C) the intended use of the product sold.

10 **SEC. 7. WAIVER AUTHORITY.**

11 (a) IN GENERAL.—The President may by Executive
12 order waive the applicability of any provision of section
13 3 to a person or entity if the President determines that
14 the waiver is necessary to protect the national security in-
15 terests of the United States. The President shall, not later
16 than 15 days after making such determination, submit a
17 report to the committees referred to in subsection (c) that
18 includes the factual basis upon which such determination
19 was made. The report may be in classified format.

20 (b) WAIVERS FOR CERTAIN CLASSES OF END
21 USERS.—The President may by Executive order waive the
22 licensing requirements of section 6 for specific classes of
23 end users identified as being eligible for receipt of
24 encryption commodities and software under license excep-
25 tion in section 740.17 of title 15, Code of Federal Regula-

1 tions, as in effect on July 17, 1999. The President shall,
2 not later than 15 days after issuing such a waiver, submit
3 a report to the committees referred to in subsection (c)
4 that includes the factual basis upon which such waiver was
5 made. The report may be in classified format.

6 (c) COMMITTEES.—The committees referred to in
7 subsections (a) and (b) are the Committee on Inter-
8 national Relations, the Committee on Armed Services, and
9 the Permanent Select Committee on Intelligence of the
10 House of Representatives, and the Committee on Foreign
11 Relations, the Committee on Armed Services, and the Se-
12 lect Committee on Intelligence of the Senate.

13 **SEC. 8. ENCRYPTION INDUSTRY AND INFORMATION SECU-**
14 **RITY BOARD.**

15 (a) ENCRYPTION INDUSTRY AND INFORMATION SE-
16 CURITY BOARD ESTABLISHED.—There is hereby estab-
17 lished an Encryption Industry and Information Security
18 Board. The Board shall undertake an advisory role for the
19 President on the matter of foreign availability of
20 encryption products.

21 (b) MEMBERSHIP.—(1) The Board shall be composed
22 of 12 members, as follows:

23 (A) The Secretary, or the Secretary's designee.

24 (B) The Attorney General, or his or her des-
25 ignee.

1 (C) The Secretary of Defense, or his or her des-
2 ignee.

3 (D) The Director of Central Intelligence, or his
4 or her designee.

5 (E) The Director of the Federal Bureau of In-
6 vestigation, or his or her designee.

7 (F) The Special Assistant to the President for
8 National Security Affairs, or his or her designee,
9 who shall chair the Board.

10 (G) Six representatives from the private sector
11 who have expertise in the development, operation,
12 marketing, law, or public policy relating to informa-
13 tion security or technology. Members under this sub-
14 paragraph shall each serve for 5-year terms.

15 (2) The six private sector representatives described
16 in paragraph (1)(G) shall be appointed as follows:

17 (A) Two by the Speaker of the House of
18 Representatives.

19 (B) One by the Minority Leader of the
20 House of Representatives.

21 (C) Two by the Majority Leader of the
22 Senate.

23 (D) One by the Minority Leader of the
24 Senate.

1 (c) MEETINGS.—The Board shall meet at such times
2 and in such places as the Secretary may prescribe, but
3 not less frequently than every four months.

4 (d) FINDINGS AND RECOMMENDATIONS.—The chair
5 of the Board shall convey the findings and recommenda-
6 tions of the Board to the President and to the Congress
7 within 30 days after each meeting of the Board. The rec-
8 ommendations of the Board are not binding upon the
9 President.

10 (e) LIMITATION.—The Board shall have no authority
11 to review any export determination made pursuant to this
12 Act.

13 (f) TERMINATION.—This section shall cease to be ef-
14 fective 10 years after the date of the enactment of this
15 Act.

16 **SEC. 9. MARKET SHARE SURVEY.**

17 The Secretary shall, at least once every 6 months,
18 conduct a market share survey of foreign markets for
19 encryption products. The Secretary shall publish the re-
20 sults of the survey in the Federal Register. The publica-
21 tion shall include an assessment of the market share of
22 each foreign encryption product in each market surveyed
23 and a description of the general characteristics of each
24 encryption product.

1 **SEC. 10. DEFINITIONS.**

2 In this Act:

3 (1) **ENCRYPTION.**—The term “encryption”
4 means the transformation or scrambling of data, for
5 the purpose of protecting such data, from plaintext
6 to an unreadable or incomprehensible format, re-
7 gardless of the techniques used for such trans-
8 formation or scrambling and regardless of the me-
9 dium in which such data occur or can be found.

10 (2) **EXPORT AND EXPORTER.**—The term “ex-
11 port” includes reexport, the term “exporter” in-
12 cludes “reexporter”.

13 (3) **SECRETARY.**—The term “Secretary” means
14 the Secretary of Commerce.